

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 2163 of the Regular Session

As Engrossed: H3/29/05 H4/6/05

A Bill

State of Arkansas

85th General Assembly

Regular Session, 2005

SENATE BILL 1169

By: Senator Hill

By: Representative Thomason

For An Act To Be Entitled

AN ACT TO ADOPT THE ADMINISTRATIVE PROVISIONS OF
THE STREAMLINED SALES TAX AGREEMENT; AND FOR
OTHER PURPOSES.

Subtitle

AN ACT TO ADOPT THE ADMINISTRATIVE
PROVISIONS OF THE STREAMLINED SALES TAX
AGREEMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Title 26 is amended to add a new chapter to read as follows:

26-21-101. Title.

This chapter shall be known and may be cited as the "Streamlined Sales Tax Administrative Act".

26-21-102. Legislative findings and intent.

The Eighty-fifth General Assembly finds that this state should enter into an agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

26-21-103. Definitions.

As used in this chapter:



1 (1) "Agent" means a person appointed by a seller to represent
2 the seller before the State of Arkansas and the other states in the
3 agreement;

4 (2) "Agreement" means the multistate agreement to simplify and
5 modernize sales and use tax administration known as the Streamlined Sales and
6 Use Tax Agreement;

7 (3) "Certified automated system" means software that is
8 certified under the agreement to calculate the tax imposed by each
9 jurisdiction on a transaction, determine the amount of tax to remit to the
10 appropriate state, and maintain a record of the transaction;

11 (4) "Certified service provider" means an agent certified under
12 the agreement to perform all the seller's sales and use tax functions, other
13 than the seller's obligation to remit tax on its own purchases;

14 (5) "Entity-based exemption" means an exemption based on who
15 purchases the product or who sells the product;

16 (6) "Model 1 seller" means a seller that has selected a
17 certified service provider as its agent to perform all the seller's sales and
18 use tax functions, other than the seller's obligation to remit tax on its own
19 purchases;

20 (7) "Model 2 seller" means a seller that has selected a
21 certified automated system to perform part of its sales and use tax
22 functions, but retains responsibility for remitting the tax;

23 (8)(A) "Model 3 seller" means a seller that has:

24 (i) Sales in at least five (5) member states;

25 (ii) Total annual sales revenue of at least five
26 hundred million dollars (\$500,000,000);

27 (iii) A proprietary system that calculates the
28 amount of tax due each jurisdiction; and

29 (iv) Entered into a performance agreement with the
30 member states that establishes a tax performance standard for the seller.

31 (B) As used in subdivision (8)(A) of this section, a
32 "seller" includes an affiliated group of sellers using the same proprietary
33 system;

34 (9) "Person" means an individual, trust, estate, fiduciary,
35 partnership, limited liability company, limited liability partnership,
36 corporation, or any other legal entity;

1 (10) "Purchaser" means a person to which a sale of personal
2 property is made or to which a service is furnished;

3 (11) "Seller" means a person making sales, leases, or rentals of
4 personal property or services;

5 (12) "State" means any state of the United States and the
6 District of Columbia; and

7 (13) "Use-based exemption" means an exemption based on the
8 purchaser's use of the product.

9
10 26-21-104. Seller registration.

11 The Department of Finance and Administration shall participate in an
12 online sales and use tax registration system in cooperation with the states
13 that are members of the agreement.

14
15 26-21-105. Taxing jurisdictions.

16 The Department of Finance and Administration shall participate with the
17 states that are members of the agreement in the development of an address-
18 based system for assigning taxing jurisdictions.

19
20 26-21-106. Relief from certain liability.

21 A seller or certified service provider shall not be liable to the State
22 of Arkansas or its local jurisdictions for charging and collecting the
23 incorrect amount of sales or use tax if the seller or the certified service
24 provider relied on erroneous data provided by the Department of Finance and
25 Administration on tax rates, boundaries, or taxing jurisdiction assignments.

26
27 26-21-107. Administration of exemptions.

28 (a) The Department of Finance and Administration shall administer use-
29 based and entity-based exemptions when practicable through a direct pay
30 permit, an exemption certificate, or another means that does not burden
31 sellers.

32 (b)(1) Sellers that follow the exemption requirements as prescribed by
33 the Director of the Department of Finance and Administration shall be
34 relieved from any tax otherwise applicable if it is determined that the
35 purchaser improperly claimed an exemption.

36 (2) If it is determined that the purchaser improperly claimed an

1 exemption, the Department of Finance and Administration shall hold the
2 purchaser liable for the nonpayment of tax.

3 (3) The relief from liability provided in subdivision (b)(1) of
4 this section does not apply to a seller that fraudulently fails to collect
5 the tax or solicits purchasers to participate in the unlawful claim of an
6 exemption.

7
8 26-21-108. Returns and remittance of funds.

9 (a) The Director of the Department of Finance and Administration shall
10 promulgate rules to provide an alternative method for making payments if an
11 electronic funds transfer fails on its due date.

12 (b)(1) The Department of Finance and Administration shall develop a
13 simplified tax reporting form to be used for all state and local sales and
14 use taxes levied by the Arkansas Gross Receipts Act of 1941 and the Arkansas
15 Compensating Tax Act of 1949.

16 (2) The Department of Finance and Administration shall provide a
17 separate reporting form for any other special or miscellaneous excise taxes
18 so as not to violate the agreement.

19 (3) The Department of Finance and Administration may require
20 additional information returns to be submitted not more frequently than every
21 six (6) months.

22
23 26-21-109. Customer refund procedures.

24 (a)(1) A cause of action against the seller for over-collected sales
25 or use taxes does not accrue until sixty (60) days after a purchaser has
26 provided written notice to the seller.

27 (2) The written notice to the seller required in subdivision
28 (a)(1) of this section must contain the information necessary to determine
29 the validity of the request.

30 (b) In connection with a purchaser's request from a seller of over-
31 collected sales or use taxes, a seller shall be presumed to have a reasonable
32 business practice, if in the collection of the sales or use taxes, the
33 seller:

34 (1) Uses either a certified service provider or a certified
35 automated system, including a certified proprietary system, that is certified
36 by the State of Arkansas; and

1 (2) Has remitted to the Department of Finance and Administration
2 all taxes collected less any deductions, credits, or collection allowances.

3
4 26-21-110. Amnesty for registration.

5 (a) The Director of the Department of Finance and Administration shall
6 provide amnesty for uncollected or unpaid sales or use tax to a seller that
7 registers to pay or to collect and remit applicable sales or use tax on sales
8 made to purchasers in the state in accordance with the terms of the
9 agreement, provided that the seller was not registered to collect sales and
10 use tax in the State of Arkansas in the twelve-month period preceding the
11 effective date of the state's participation in the agreement.

12 (b) The amnesty shall preclude assessment for uncollected or unpaid
13 sales or use tax, penalty, and interest for sales made during the period that
14 the seller was not registered in the state, provided registration occurs
15 within twelve (12) months of the date the state is found to be in compliance
16 with the agreement.

17 (c) The amnesty shall not be available to a seller with respect to any
18 matter or matters for which the seller received notice of the commencement of
19 an audit and the audit is not yet finally resolved, including any related
20 administrative and judicial processes.

21 (d) The amnesty shall not be available for sales or use taxes already
22 paid or remitted to the Department of Finance and Administration or to taxes
23 collected by the seller.

24 (e) The amnesty shall be fully effective, absent the seller's fraud or
25 intentional misrepresentations of a material fact, so long as the seller
26 continues its Arkansas sales and use tax registration and continues payment
27 or collection and remittance of applicable sales or use taxes for a period of
28 at least thirty-six (36) months from the date amnesty was awarded.

29 (f) The amnesty shall be applicable only to sales or use taxes due
30 from a seller in its capacity as a seller and not to sales or use taxes due
31 from a seller in its capacity as a purchaser.

32
33 26-21-111. Certification and payment of service providers and
34 automated systems.

35 The Director of the Department of Finance and Administration may:

36 (1) Certify service providers and automated systems to aid in

1 the administration of sales and use tax collections; and

2 (2) Provide a monetary allowance to the certified service
3 providers and the certified automated systems.

4
5 26-21-112. Effective date for rate changes.

6 The effective date of rate changes for services covering a period
7 starting before and ending after the statutory effective date shall be as
8 follows:

9 (a) For a rate increase, the new rate shall apply to the first billing
10 period starting on or after the effective date.

11 (b) For a rate decrease, the new rate shall apply to bills rendered on
12 or after the effective date.

13
14 26-21-113. Promulgation of rules.

15 The Director of the Department of Finance and Administration shall
16 promulgate rules and develop forms to implement the provisions of this
17 chapter.

18
19 26-21-114. Governing Board.

20 For the purposes of representing this state on the governing board
21 authorized by the agreement, there shall be four (4) representatives as
22 follows:

23 (a) One (1) member appointed by the President Pro Tempore of the
24 Senate;

25 (b) One (1) member appointed by the Speaker of the House of
26 Representatives;

27 (c) One (1) member appointed by the Governor; and

28 (d) The Director of the Department of Finance and Administration or
29 his or her designee.

30
31 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that this state is losing sales and
33 use tax revenue due to the rapid growth of Internet sales; that the playing
34 field between local businesses and out-of-state businesses needs to be
35 leveled; that an undue burden on interstate commerce currently exists; and
36 that this act is necessary in order for Arkansas to participate in the

Streamlined Sales Tax Agreement. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.

/s/ Hill

APPROVED: 4/13/2005

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